

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Erin Donovan	Team: Team # 6	CCRB Case #: 200613565	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 10/08/2006 5:30 PM	Location of Incident: § 87(2)(b) § 87(2)(b)	Precinct: 73	18 Mo. SOL 4/8/2008	EO SOL 4/8/2008	
Date/Time CV Reported Wed, 10/11/2006 9:41 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 10/11/2006 9:41 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Oscar Fernandez	31750	932636	NARCBMN
2. POM Maurice Walston	24763	935950	073 PCT
3. POM Shane Killilea	30946	927030	NARCBBN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Robert Cincotta	21824	933694	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Maurice Walston	Abuse: PO Maurice Walston searched § 87(2)(b) at § 87(2)(b).	§ 87(2)(b)
B.POM Maurice Walston	Abuse: PO Maurice Walston searched § 87(2)(b) at § 87(2)(b).	§ 87(2)(b)
C.POM Maurice Walston	Force: PO Maurice Walston used physical force against § 87(2)(b) at § 87(2)(b).	§ 87(2)(b)
D.POM Shane Killilea	Force: PO Shane Killilea used physical force against § 87(2)(b) at § 87(2)(b).	§ 87(2)(b)
E.POM Oscar Fernandez	Force: PO Oscar Fernandez used physical force against § 87(2)(b) at § 87(2)(b).	§ 87(2)(b)
F.POM Shane Killilea	Off. Language: PO Shane Killilea made remarks to § 87(2)(b) based upon race.	§ 87(2)(b)
G.POM Oscar Fernandez	Force: PO Oscar Fernandez used a chokehold against § 87(2)(b) at the 73rd Precinct stationhouse.	§ 87(2)(b)

Synopsis

On October 8, 2006, Officer Fernandez, Officer Walston, and Officer Kililea approached § 87(2)(b) and § 87(2)(b) because Officer Fernandez witnessed a sale of marijuana in the vicinity of § 87(2)(b) in Brooklyn. Officer Walston approached § 87(2)(b) and § 87(2)(b) and allegedly searched their pockets (Allegations A and B). § 87(2)(b) punched Officer Walston in the face. Officer Walston attempted to handcuff § 87(2)(b) in order to affect an arrest and there was a physical altercation (Allegation C). Officer Kililea and Officer Fernandez helped Officer Walston contain § 87(2)(b) by using physical force (Allegations D and E). § 87(2)(b) alleged that Officer Kililea said, “Die nigger” to him (Allegation F). Once at the 73rd Precinct, § 87(2)(b) alleged that Officer Fernandez choked him (Allegation G).

§ 87(2)(b), § 87(2)(g)

According to *PD v. Basandella*, an officer can use the amount of force necessary in order to contain an uncooperative individual. § 87(2)(b), § 87(2)(g)

This case was originally assigned to Investigator Matthew Bleiberg and was re-assigned to Investigator Erin Donovan on March 26, 2007, upon his resignation.

Summary of Complaint

§ 87(2)(b)

On October 11, 2006, § 87(2)(b) filed a complaint with the CCRB via the call processing system on behalf of her son, § 87(2)(b) was interviewed at the CCRB (Enc.11a-f) on October 27, 2006. He is a § 87(2)(b)-year-old black male, 5’5 and 135 pounds.

§ 87(2)(b) went outside of his house located at § 87(2)(b) in Brooklyn, NY. § 87(2)(b) was wearing a red hooded sweatshirt and black sweatpants. When he arrived outside, his neighbor § 87(2)(b) was smoking a cigarette by the front of his gate. The two then listened to music coming from a boom box inside his gate. Two minutes after § 87(2)(b) went to the gate, an unmarked police vehicle coming from Saratoga Avenue with three officers pulled up. An officer in the car said that someone had made a phone call stating that a person was smoking marijuana. § 87(2)(b) told this officer that nobody was smoking marijuana and they were just listening to music. The three officers got out of their vehicle and came up to the gate. PO 1 (male, black, mustache, fade haircut, dark brown eyes), identified by the CCRB as Officer Maurice Walston, asked § 87(2)(b) and § 87(2)(b) what their names and ages were. PO Walston asked § 87(2)(b) whom the marijuana belonged to and § 87(2)(b) told PO Walston that he did not know. PO Walston grabbed § 87(2)(b) by his shirtsleeve and started going through his pockets. § 87(2)(b) smacked PO Walston’s hand away. PO Walston then came over to § 87(2)(b) and asked him to take his hand out of his pockets. PO Walston grabbed his shirtsleeve and put his hand in his pants pocket. § 87(2)(b) asked § 87(2)(b) to call his mother so he went to ring § 87(2)(b)’s doorbell, and § 87(2)(b) started to run inside his house. PO Walston then said, “Now you want to call your mother,” and pushed his chest against the wall of his house. § 87(2)(b) turned around and pushed PO Walston. The two officers standing outside of the gate tried to get in the gate. PO Walston then took a swing at § 87(2)(b). PO Walston threw the first punch. § 87(2)(b) then threw a retaliatory punch. § 87(2)(b) made contact with PO Walston on his jaw. PO Walston then hit § 87(2)(b) in his face and his arms. The two other officers at the scene pushed through the gate. PO Walston and § 87(2)(b) started “tussling.” § 87(2)(b)’s head was then hit against the wall and he blacked out.

§ 87(2)(b)’s head was face down on the floor when he started getting attacked by PO 2 (male, Hispanic, short, bald, medium-build, around 160 pounds), later identified by the CCRB as Officer Oscar Fernandez, and PO 3 (male, white, heavyset, gray-blond hair), later identified as PO Kililea. § 87(2)(b) received more than five punches on his back during this time. § 87(2)(b) was punched more than five times overall on his face. On the ground, § 87(2)(b) heard § 87(2)(b) telling an unknown officer that he has asthma and that he could not breathe. An officer had his knee pressed against § 87(2)(b) which caused him breathing problems. § 87(2)(b) was trying to get an officer off of § 87(2)(b) at this time.

§ 87(2)(b) looked at PO Walston who said, "You put up a fight," and asked the officer what was going on. PO Walston then pushed him in the face with force. § 87(2)(b) then asked PO 3 to open up a window because he could not breathe because of his asthma. PO Kililea told § 87(2)(b) that he was not going to open up a window. PO Kililea then pulled his hoodie over his head, and said, "You're going to die today. You can't do nothing."

However, when asked again if the officer said anything to him in the vehicle, later on in the interview, § 87(2)(b) stated PO Kililea said, "Die nigger." § 87(2)(b) could not breathe in the vehicle at this time. PO Kililea was sitting in the back seat next to § 87(2)(b). PO Fernandez was driving the vehicle and PO Walston was in the passenger seat. § 87(2)(b) was sitting diagonally to PO Walston. § 87(2)(b) was brought to the 73rd Precinct and put in a cell by PO Fernandez. At the precinct, § 87(2)(b) asked PO Fernandez to call his mother because he needed medicine. PO Fernandez said, "No." PO Fernandez asked § 87(2)(b) for his name. § 87(2)(b) told PO Fernandez to ask his mother. PO Fernandez then asked § 87(2)(b) again. § 87(2)(b) told PO Fernandez that he should ask his mother. PO Fernandez then choked § 87(2)(b) with two hands for 15-20 seconds and banged his head against the wall. There were no prisoners that witnessed this incident, yet one police officer, PO 4 (male, white, 5'7-5'8, blonde hair, blue eyes, a little stocky) did witness it. § 87(2)(b) was handcuffed at this time.

Results of Investigation

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB (Enc. 14a-d) on October 27, 2006. He is a § 87(2)(b) year-old black male, 5'5", and 111 pounds.

On October 8, 2006, § 87(2)(b) was sitting in the back of § 87(2)(b)'s front yard. § 87(2)(b) was close to the front gate. The two were listening to music out of a boom box. § 87(2)(b) was wearing blue jeans and an orange shirt with a brown hoodie. § 87(2)(b) was smoking a cigarette. The two were outside for about 10 minutes when an unmarked blue vehicle pulled up to § 87(2)(b)'s residence. Three officers were in the vehicle, and they had sweaters on. An officer said they received a complaint from § 87(2)(b) in Brooklyn regarding a disturbance. PO 1 (black, tall, had muscles), identified by the CCRB as Officer Maurice Walston, walked up the stairs of § 87(2)(b). PO 2 (Hispanic, gold teeth, a little bit of hair, around 5'6-5'7), identified by the CCRB as Officer Oscar Fernandez, and PO 3 (white, bald, "kind of fat", regular height), later identified as Officer Kililea stood outside the front gate. All three questioned § 87(2)(b) and himself about their ages and where they go to school. However, PO Fernandez and PO Kililea asked most of the questions. PO Walston walked up the stairs of § 87(2)(b) and grabbed § 87(2)(b)'s arm. § 87(2)(b) pulled away from the officer.

PO Walston tried to search § 87(2)(b) by putting his hands in his jean pockets. PO Walston did not ask § 87(2)(b) for identification. The other two officers opened the front gate. PO Fernandez and PO Kililea then held § 87(2)(b) and put their hands in his pockets. § 87(2)(b) told § 87(2)(b) to call his mother, § 87(2)(b). § 87(2)(b) went inside his house and alerted § 87(2)(b) of the situation. When § 87(2)(b) went back outside, he observed three officers attacking § 87(2)(b). § 87(2)(b) was lying on his back. § 87(2)(b)'s hands were swinging upwards to the officers. § 87(2)(b) pulled off PO Fernandez. PO Walston was closest to § 87(2)(b)'s head and in front of him. PO Fernandez was to the right of § 87(2)(b). PO Kililea was to the left of § 87(2)(b). When he pulled the Hispanic officer off of § 87(2)(b), PO Walston punched § 87(2)(b) with a closed fist in the stomach. § 87(2)(b) was yelling at the officers to get off of him. An officer had his knee in his back.

PO Fernandez told § 87(2)(b) that he could not get involved with the incident or he would be arrested for disrupting an arrest. When § 87(2)(b) backed off, § 87(2)(b) came out of her house. § 87(2)(b) went back to his house. PO Fernandez found marijuana on the ground by § 87(2)(b) when PO Fernandez and PO Kililea had § 87(2)(b) lying on the ground. § 87(2)(b) recognized that it was marijuana from the look of the contents in the bag. Four marked police vehicles were called as backup. When § 87(2)(b) came back, he observed § 87(2)(b) in a car, knocked out. § 87(2)(b) was behind the driver's side of the vehicle.

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB (Enc.10a-e) on October 27, 2006. She is a § 87(2)(b)-year-old black female, 5' and 133 pounds.

§ 87(2)(b) stated that on October 8, 2006, she was in her house cooking dinner. § 87(2)(b)'s son, § 87(2)(b) had just taken his dog out to the front yard to get some air. § 87(2)(b) then went outside for less than 10 minutes when § 87(2)(b)'s friend § 87(2)(b) ran in to her house and got § 87(2)(b). § 87(2)(b) ran out of the house and observed three officers punching her son. § 87(2)(b) observed punches thrown from the officers and § 87(2)(b). § 87(2)(b) observed PO 1 (6'0", 190-200 lbs) throwing more than five punches at § 87(2)(b). § 87(2)(b) tried pulling PO 1 off her son. An officer pulled § 87(2)(b) away and told her that she was interrupting an arrest. PO 2 (white, 6'-6"2, close to 200 lbs., muscular) threw an unknown number of punches at § 87(2)(b) but § 87(2)(b) was unable to see where he was punching him. PO 1 and PO 2 were on the same side of § 87(2)(b) as he was on the ground.

All three officers had § 87(2)(b) pinned down on the grate leading to the basement PO 1 had § 87(2)(b)'s head pressed sideways on the grate. § 87(2)(b) was yelling, "I can't breathe," repeatedly. § 87(2)(b) told the officers that § 87(2)(b) was asthmatic. An officer told § 87(2)(b) "He's OK." § 87(2)(b) put her hands up under § 87(2)(b)'s chest, trying to pull his hands away from his chest since they could not pull his hands away. § 87(2)(b) ended up biting § 87(2)(b)'s finger, and she then pulled her hand away.

The officers kept "tangling" with § 87(2)(b) pulled him up, handcuffed him and dragged him out of the yard to an unmarked black vehicle. § 87(2)(b) did not know which officers dragged § 87(2)(b) out of the yard, since at that point, there were many officers in the yard. § 87(2)(b) was dragged by his hands, face-forward. At this time, § 87(2)(b) looked unconscious. § 87(2)(b) was slumped against the backseat of the driver's side.

Officer Statement: Officer Oscar Fernandez

On January 11, 2007, Officer Oscar Fernandez (Hispanic, male, 5'8"-5'9", light complexion) was interviewed at the CCRB (Enc.21a-c). On October 8, 2006, PO Fernandez worked from 1:00pm to 9:35pm and his assignment was SNEU. He was in a chase car and worked with Officer Maurice Walston and Officer Shane Kilillea. He was dressed in uniform and assigned to a black Chevy Impala. PO Fernandez did not have any entries in his memo book regarding the incident.

At 5:30pm PO Fernandez dropped off PO Cutler and PO Cincotta at observation point. PO Fernandez canvassed the area for SNEU operation. PO Fernandez drove on § 87(2)(b), which is a high prone drug area. He observed a gentleman, identified by the CCRB as § 87(2)(b) (wore a black hooded sweatshirt) in front of his house doing a hand to hand action with another individual. PO Fernandez knew that he had made a sale and decided to circle around the block. PO Fernandez knew what a hand to hand looked like because he has made over 100 narcotics arrests in his career and he is trained in narcotics.

All three officers got out of the car and approached the individuals. PO Fernandez asked the individuals if they made a call about shots fired to try and throw them off because they usually run into their house. PO Fernandez explained to the CCRB that this is not protocol, but it is something that he uses because these people are violent. Their first instinct is to run and PO Fernandez was trying to effect the arrest. They had their radio blasting at the time. He informed PO Walston that they would have to jump the lower fence next door. They jumped over the fence. PO Fernandez asked § 87(2)(b) (wearing an orange shirt) if he lived there. PO Fernandez asked § 87(2)(b) if he lived at the house and other basic information.

§ 87(2)(b) and § 87(2)(b) called for § 87(2)(b)'s mother to come outside. PO Fernandez observed his partner put a handcuff on § 87(2)(b) so he grabbed § 87(2)(b)'s right arm. He noticed a plastic zip lock bag filled with marijuana that fell out of § 87(2)(b)'s hooded sweatshirt pocket. § 87(2)(b) went "berserk" he let go and took a swing at PO Fernandez' partner, PO Walston. PO Fernandez defined "berserk" as throwing a punch at PO Walston and yelled "let me go." PO Kilillea walked in through the gate and started wrestling with § 87(2)(b) in order to effect the arrest. § 87(2)(b) was kicking and fighting with the officers. They fell down to the floor, but still could not handcuff § 87(2)(b) because he punched and kicked PO Walston and PO Kilillea. They wrestled with § 87(2)(b) and attempted to restrain him. § 87(2)(b) resisted arrest. Someone tripped over the garbage cans and all three of them fell to the ground. PO Fernandez did not think that § 87(2)(b) was having an asthma attack during this time. None of the officers were injured to the point where they needed medical attention. A crowd of 20-25 people formed around and individuals were yelling.

§ 87(2)(b)'s mother, § 87(2)(b) (black, female, 5'4", short hair) came out of the basement door of the house and saw her son. § 87(2)(b) started hitting PO Kililea and PO Walston. PO Kililea and PO Walston were focused on handcuffing § 87(2)(b). She yelled, "get off my son." PO Fernandez explained to § 87(2)(b) that she had to back off of the officers. PO Fernandez showed § 87(2)(b) the bag of marijuana to show why § 87(2)(b) was being arrested. § 87(2)(b) did not mention anything about § 87(2)(b) having an asthma attack. Since the crowd was gathering, PO Fernandez called in for a 10-85. A few RMP's came to the scene and additional officers helped put § 87(2)(b) into handcuffs. There were about 10-12 officers that arrived. PO Fernandez never searched § 87(2)(b). § 87(2)(b) started to go "limp" when they picked him up in handcuffs. PO Fernandez and another officer walked him to the car as if he was drunk by holding him up. He did not recall which officer helped him. PO Fernandez put § 87(2)(b) into their Chevy Impala car and went to the precinct.

When they arrived at the station house, § 87(2)(b) was in handcuffs and they put him into a holding cell. § 87(2)(b) was calm at this point and asked PO Fernandez to give him a kiss. § 87(2)(b) tried to kiss PO Fernandez and was acting "crazy." § 87(2)(b) informed PO Fernandez that he was having an asthma attack. PO Fernandez asked him if he wanted a drink of water or if he wanted him to call an ambulance. § 87(2)(b) began shaking like he was having a seizure, but PO Fernandez knew he was faking it. The fact that § 87(2)(b) verbally said, "I'm having a seizure," made PO Fernandez think that he was faking it because when people have seizures they usually cannot talk. PO Fernandez' sergeant told him to take the handcuffs off of § 87(2)(b). § 87(2)(b) threw himself to the floor and acted like he was having an epileptic attack. PO Fernandez got the handcuffs off of § 87(2)(b) and attempted to give him water. His eyes were closed and he was not responding. PO Fernandez realized that an ambulance needed to be called. PO Fernandez did not choke § 87(2)(b) or put his hands near his neck. PO Kililea got on the radio and called for an ambulance. An EMT worker (white, male) gave § 87(2)(b) tests and told PO Fernandez that he was not having a seizure. They put him on a stretcher and PO Fernandez noticed that § 87(2)(b) would close his eyes when PO Fernandez came near him. They took him to § 87(2)(b). § 87(2)(b) came to the stationhouse and PO Fernandez gave her § 87(2)(b)'s cell phone as a favor. PO Kililea did not say, "your going to die today" or "die nigger" No officer punched § 87(2)(b) in the face. PO Fernandez did not see any physical injuries on § 87(2)(b).

Officer Statement: Officer Shane Kililea

On April 17, 2007, Officer Shane Kililea (male, white, 6'4", 240lbs, brown hair, blue eyes) was interviewed at the CCRB (Enc. 23a-b). On October 8, 2006, PO Kililea worked from 1:00pm to 9:35pm and his assignment was SNEU. PO Kililea worked with PO Fernandez and PO Walston and was in uniform. They were assigned to a black Chevy Impala. PO Kililea did not have any entries in his memo book regarding the incident.

The officers drove down Decatur Street and PO Fernandez, the operator of the vehicle, saw an individual sell marijuana to another individual. PO Kililea did not observe this interaction. At that point they stopped the car, got out and there were two males in the courtyard porch area of a brownstone building. § 87(2)(b) and § 87(2)(b) were standing in front of the porch and there was a radio playing. PO Fernandez recovered marijuana from the ground. PO Walston and PO Fernandez approached them and PO Walston attempted to handcuff § 87(2)(b) and got one handcuff on § 87(2)(b). § 87(2)(b) then punched PO Walston in the face.

Once PO Walston was punched in the face and § 87(2)(b) resisted, PO Kililea came into the gated area. § 87(2)(b) ran away from the scene when § 87(2)(b) punched PO Walston in the face. None of the officers chased § 87(2)(b) because they were struggling with § 87(2)(b). Neither PO Kililea nor any other officer punched or kicked § 87(2)(b). The officers attempted to handcuff § 87(2)(b) and fell to the ground or brought him to the ground. PO Walston grabbed one arm while PO Kililea grabbed his right arm. § 87(2)(b) locked his hands underneath himself and refused to release his hands. He had his hands underneath him with his body flat laying face to the ground. § 87(2)(b), § 87(2)(b)'s mother, stood over PO Kililea and PO Walston as they attempted to handcuff him. She told the officers to let him go and PO Kililea said § 87(2)(b) needed to release his hands. § 87(2)(b) yelled at the officers, but he did not remember her physically touching the officers. PO Kililea handcuffed § 87(2)(b). § 87(2)(b) did not mention anything about him having asthma. PO Fernandez was behind PO Kililea and dealt with the "hostile" crowd. There was a crowd of about 20-30 people gathering and PO Fernandez called for assistance (10-85). At some point § 87(2)(b) released his hands and the officers handcuffed him and brought him back to the station house. Neither PO Kililea nor any other officer said, "Die nigger" to § 87(2)(b).

Once § 87(2)(b) was brought to the precinct, PO Fernandez searched § 87(2)(b). When the officers brought § 87(2)(b) to the precinct he complained about his asthma and breathing problems. § 87(2)(b) asked PO Fernandez to kiss him and whenever someone else walked into the room he would have trouble breathing. PO Kililea did not see any officers place their hands around § 87(2)(b)'s neck. An ambulance was called for § 87(2)(b) after a few minutes because of his complaints of breathing problems.

Officer Statement: Officer Maurice Walston

On May 3, 2007 Officer Maurice Walston (male, black, 6'1", 210lbs, black hair, brown eyes) was interviewed at the CCRB (Enc. 24a-b). On October 8, 2006, PO Walston could not remember the exact tour he worked because he did not have his memo book with him in the interview. PO Walston stated that his usual tour is 2:00pm to 10:30pm and that he would fax his memo book entries to the investigator. His assignment was SNEU and he worked with PO Fernandez and PO Kililea. They were dressed in uniform and assigned to an unmarked black Chevy Impala.

On October 8, 2006 at around 5:30pm, PO Fernandez observed a sale of drugs between § 87(2)(b) and an unidentified buyer. PO Walston did not see the interaction. PO Fernandez, PO Walston and PO Kililea exited their vehicle and PO Fernandez spoke to § 87(2)(b) to "throw him off" while PO Walston went to effect the arrest. PO Walston stated that "throw him off" meant that PO Fernandez wanted to slow down § 87(2)(b) and not let him know what he observed. As PO Walston went to effect the arrest, § 87(2)(b) dropped marijuana onto the ground. PO Walston and PO Fernandez saw the marijuana. PO Walston grabbed § 87(2)(b) by his arms to effect the arrest. § 87(2)(b) ran from the scene and PO Walston did not have any interaction with him. § 87(2)(b) resisted by flailing his arms and punched PO Walston in the face. § 87(2)(b) only punched PO Walston once in the face. PO Walston used necessary force to subdue § 87(2)(b). He used his hands and did not use any other weapons or mace. At that time PO Kililea helped PO Walston effect the arrest. PO Walston punched § 87(2)(b) on his rib cage area once when he threw fists at PO Walston. § 87(2)(b) was standing at this time and did not complain of any pain. PO Walston described § 87(2)(b) as going "beserk," which he stated meant that § 87(2)(b) was really irate. § 87(2)(b) went wild by throwing punches and said, "get off of me." PO Walston and § 87(2)(b) were standing at this time. Later on § 87(2)(b) was placed to the ground by PO Walston and PO Kililea when he fought and resisted in order to subdue him. PO Walston slipped and hit his head on a bar that was connected to the window and he fell. They all fell to the ground and PO Walston did not recall how they fell. PO Walston had § 87(2)(b)'s arm at the time. PO Walston did not recall if he handcuffed § 87(2)(b) or PO Kililea handcuffed him. Neither PO Walston nor any other officer kicked § 87(2)(b). § 87(2)(b) was searched after he was arrested. PO Walston did not search § 87(2)(b) but he was not aware if any other officer searched him.

At the time PO Fernandez was controlling the area because there was a crowd forming. There were about 15 people in the area at the time. § 87(2)(b) was a part of this crowd, she hit PO Walston on his head and hit PO Kililea's head. PO Walston stated that he thinks she hit him with an open hand, but was not sure. She came outside from a basement door when § 87(2)(b) was on the floor. She told the officers, "get off of my son." § 87(2)(b) stood very close to PO Walston. PO Walston pushed § 87(2)(b) out of the way and told her that if she did not stop that he would arrest her. § 87(2)(b) stood back, but continued to yell and yelled to § 87(2)(b) to put his hands behind his back. At the time § 87(2)(b) had one of his hands behind his back and the other hand was close to his chest stiff to his body. § 87(2)(b) did not mention anything about § 87(2)(b) having asthma.

Officers took § 87(2)(b) to the precinct and § 87(2)(b) mentioned that he had asthma. § 87(2)(b) was placed in a single cell to calm down. PO Fernandez took his handcuffs off to try to give him his asthma pump and he refused. § 87(2)(b) threw a kiss to PO Fernandez trying to be funny. § 87(2)(b) said something to the effect of "kiss me" being sarcastic. PO Walston did not think that § 87(2)(b) had trouble breathing. § 87(2)(b) just stated that he was prone to asthma attacks. Neither PO Walston nor any other officer placed their hands around § 87(2)(b)'s neck. So the officers called EMS to the precinct and they told officers that § 87(2)(b) was faking it. PO Walston did not recall which officer called EMS. § 87(2)(b) did not respond to EMS until they threatened to use a needle. § 87(2)(b) was taken to the hospital. Neither PO Walston nor any other officer said, "Die nigger" to § 87(2)(b).

Officer Statement: Officer Robert Cincotta

PO Robert Cincotta of the 73rd Precinct was interviewed at the CCRB on December 21, 2006 (Enc. 19a-b). He is a § 87(2)(b)-year-old white male, 5'10" and 240 pounds. On October 8, 2006, PO Cincotta worked in plainclothes from 1 p.m. to 9:35 p.m. He was assigned to the SNEU team in the confines of the

73rd Precinct with PO Jason Cuttler. PO Cincotta was on the observation post, and observed sales of marijuana. PO Cincotta generally sits on a rooftop with binoculars, observing these transactions. PO Cincotta had an entry in his Memo Book at 6:01 p.m., stating that he had one male under at § 87(2)(b). § 87(2)(b) § 87(2)(b). PO Cincotta was not assigned to a motor vehicle. The arrest report was prepared by PO Cincotta and stated that § 87(2)(b) was observed exchanging marijuana with an unidentified buyer and that § 87(2)(b) resisted arrest by flailing arms and refusing to be handcuffed.

Around 3:30 p.m., PO Cincotta and the SNEU team set up an observation post in East New York. The SNEU team arrested two individuals from the East New York location. The SNEU team then re-located up north to § 87(2)(b). At that time, PO Cincotta stated an “85” went over, which was the incident involving § 87(2)(b). PO Cincotta was not at the incident location and did not witness the incident. Backup officers were called to the scene. Arrests are rotated among the officers of the SNEU team. It was PO Cincotta’s turn to make an arrest, and he did so, by becoming the arresting officer of § 87(2)(b).

When PO Cincotta arrived at the precinct, PO Oscar Fernandez told him that he was engaged in a fight with § 87(2)(b). PO Fernandez told PO Cincotta that § 87(2)(b) had punched him. PO Cincotta charged § 87(2)(b) § 87(2)(b). PO Fernandez did not go in depth with PO Cincotta about the fight. PO Cincotta did not know the names of the other officers at the scene with Mr. Fernandez. PO Cincotta performed a field test on the bag of marijuana and it came out positive. PO Cincotta did not remember the quantity of the marijuana. PO Cincotta observed § 87(2)(b) in the precinct holding cell. PO Cincotta asked § 87(2)(b) if he needed help. PO Cincotta did not remember if § 87(2)(b) said anything to him. PO Cincotta said § 87(2)(b) appeared normal. PO Cincotta did not remember if § 87(2)(b) requested medical treatment or if he was sent to a hospital.

Police Department Documents

The 73rd Precinct Tour 3 roll call from October 8, 2006 and the sprint from the incident showed which officers responded to the scene (Enc. 26a-k). The command log from October 8, 2006 showed that § 87(2)(b) s arresting officer was PO Cincotta (Enc.29a).

Medical Records

On § 87(2)(b), § 87(2)(b) was treated at § 87(2)(b) (Enc. 25a-q). As per the EMS, the patient was being arrested § 87(2)(b) and was fighting police when he hit his head on a wall and passed out. The patient remembered fighting with cops then next was in an ambulance. He complained of neck pain, headache and lightheadedness. § 87(2)(b)

In the ambulance call report it stated the patient was unconscious in prison cell of precinct. Officers stated the patient was arrested and put into holding cell. § 87(2)(b) rolled onto the floor and became unresponsive. Patient was alert to painful stimuli. § 87(2)(b) stated he suffered from a seizure, but he showed no signs or symptoms. Patient stated that he did not remember details during unconsciousness.

Officer/Complainant CCRB Histories

Officer Oscar Fernandez has a substantiated allegation for CCRB Case# 200602801, which was disposed with charges from the NYPD (Enc. 2a). Officer Maurice Walston has no substantiated cases with the CCRB in his 2 years of service with the NYPD (Enc. 3a). Officer Shane Kililea has two substantiated allegations for CCRB Case# 200301499, which were disposed with charges from the NYPD (Enc. 4a). § 87(2)(b) and § 87(2)(b) have never filed complaints before with the CCRB (Enc. 5a-6a).

Conclusions and Recommendations

Officer Identification

Officer Cincotta was identified as § 87(2)(b) s arresting officer on the arrest report prepared and he is listed on the command log as the arresting officer. Officer Fernandez was identified through Officer Cincotta’s CCRB statement. He stated PO Fernandez was at the scene. Officer Fernandez told the CCRB that he worked with Officer Kililea and Officer Walston. The physical descriptions provided by the complainants further confirmed their identities.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: